

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0337P

Use Tax

Calendar Years 1994, 1995, 1996

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer protests the penalty assessed on an audit completed on February 13, 1998.

Taxpayer failed to remit use tax on clearly taxable items. The department waived the penalty for an audit completed on October 21, 1994 where the taxpayer failed to self assess use tax. Taxpayer in the current audit also failed to self assess tax in 1994 and 1996.

1. Tax Administration – Penalty

DISCUSSION

Taxpayer's audit report revealed that a use tax accrual system was in place after an audit was completed on October 21, 1994. After the prior audit, which waived the penalty, taxpayer self assessed as required by statute in only one year of the audit. Taxpayer failed to make corrections for 1994 after he was made aware of the problem and definitely in 1996.

Taxpayer states it timely filed sales tax returns during the audit period and the assessment was due to an error on their part with no intent to avoid filing and remitting taxes.

Taxpayer, however, should have reported and remitted tax after it was made aware of the tax issues in a prior audit.

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PAGE #2

FINDING

Taxpayer's protest is denied.